

STATE OF WISCONSIN
CONTROLLED SUBSTANCES BOARD

IN THE MATTER OF RULE-MAKING : ORDER OF THE
PROCEEDINGS BEFORE THE : CONTROLLED SUBSTANCES BOARD
CONTROLLED SUBSTANCES BOARD : ADOPTING RULES
: (CLEARINGHOUSE RULE 20-022)

PROPOSED ORDER

An order of the Controlled Substances Board to create CSB 2.70, relating to scheduling MMB-FUBICA and 4F-MDMB-BINACA.

Analysis prepared by the Department of Safety and Professional Services.

ANALYSIS

Statutes interpreted: s. 961.14, Stats.

Statutory authority: ss. 961.11 (1) and (4m), Stats.

Explanation of agency authority:

The controlled substances board shall administer this subchapter and may add substances to or delete or reschedule all substances listed in the schedules in ss. 961.14, 961.16, 961.18, 961.20 and 961.22 pursuant to the rule-making procedures of ch. 227. (s. 961.11(1), Stats.)

The controlled substances board, by rule and without regard to the requirements of sub. (1m), may schedule a controlled substance analog as a substance in schedule I regardless of whether the substance is substantially similar to a controlled substance in schedule I or II, if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under 21 USC 355. Upon receipt of notice under s. 961.25, the board shall initiate scheduling of the controlled substance analog on an emergency basis under this subsection. The scheduling of a controlled substance analog under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors under sub. (1m) (d), (e) and (f), and may also consider clandestine importation, manufacture or distribution, and, if available, information concerning the other factors under sub. (1m). The board may not promulgate a rule under this subsection until it initiates a rule-making proceeding under subs. (1), (1m), (1r) and (2) with respect to the controlled substance analog. A rule promulgated under this subsection lapses upon the conclusion of the rule-making proceeding initiated under subs. (1), (1m), (1r) and (2) with respect to the substance. (s. 961.11 (4m), Stats.)

Related statute or rule: s. 961.14, Stats.

Plain language analysis:

This rule schedules MMB-FUBICA and 4F-MDMB-BINACA as Schedule I controlled substances.

Summary of, and comparison with, existing or proposed federal regulation:

MMB-FUBICA and 4F-MDMB-BINACA are not currently scheduled under the Controlled Substances Act.

Summary of public comments received on statement of scope and a description of how and to what extent those comments and feedback were taken into account in drafting the proposed rule: N/A

Comparison with rules in adjacent states:

Illinois: Illinois has not scheduled MMB-FUBICA and 4F-MDMB-BINACA as controlled substances.

Iowa: Iowa has not scheduled MMB-FUBICA and 4F-MDMB-BINACA as controlled substances.

Michigan: Michigan has not scheduled MMB-FUBICA and 4F-MDMB-BINACA as controlled substances.

Minnesota: Minnesota has not scheduled MMB-FUBICA and 4F-MDMB-BINACA as controlled substances.

Summary of factual data and analytical methodologies:

Based upon the Green County District Attorney's request for emergency scheduling and the finding of an imminent hazard to the public safety, the Controlled Substances Board decided to schedule MMB-FUBICA and 4F-MDMB-BINACA. In making the findings of imminent hazard to the public safety, the Controlled Substances Board considered the following factors: the history and current pattern of abuse; the scope, duration and significance of abuse; and the risk to the public health.

Analysis and supporting documents used to determine effect on small business or in preparation of economic impact analysis:

The rule schedules two synthetic drugs as Schedule I controlled substances which will not have any effect on small business.

Fiscal Estimate and Economic Impact Analysis:

The Fiscal Estimate and Economic Impact Analysis is attached.

Effect on small business:

These proposed rules do not have an economic impact on small businesses, as defined in s. 227.114 (1), Stats. The Department's Regulatory Review Coordinator may be contacted by email at Daniel.Hereth@wisconsin.gov, or by calling (608) 267-2435.

Agency contact person:

Jon Derenne, Administrative Rules Coordinator, Department of Safety and Professional Services, Division of Policy Development, 4822 Madison Yards Way, P.O. Box 8366, Madison, Wisconsin 53708; telephone 608-266-0955; email at DSPSAdminRules@wisconsin.gov.

Place where comments are to be submitted and deadline for submission:

The public hearing on this rule was held on August 18, 2020. No comments were received.

TEXT OF RULE

SECTION 1. CSB 2.70 is created to read:

CSB 2.70 Scheduling 4F-MDMB-BINACA and MMB-FUBICA. Section 961.14 (4) (tb) 38m. and 43m., Stats., are created to read:

961.14 (4) (tb) 38m. Methyl 2-(1-(4-fluorobutyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate, commonly known as 4F-MDMB-BINACA or 4F-MDMB-BUTINACA.
43m. Methyl 2-(1-(4-fluorobenzyl)-1H-indole-3-carboxamido)-3-methylbutanoate, commonly known as MMB-FUBICA or AMB-FUBICA.

SECTION 2. EFFECTIVE DATE. The rules adopted in this order shall take effect on the first day of the month following publication in the Wisconsin Administrative Register, pursuant to s. 227.22 (2) (intro.), Stats.

(END OF TEXT OF RULE)

Dated: _____

Chair
Controlled Substances Board